Supreme Court, U.S.
FILED
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

Alfonso Diaz del Castillo,

Petitioner

v.

Aeroservice Aviation Center, Inc.,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE

SUPREME COURT OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

ALFONSO DIAZ DEL CASTILLO

PETITIONER, PRO SE.

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19 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the current Florida Constitution in Article 5, Section 3(b)(3), has a provision which violates the Federal Constitution and denies its citizens the rights secured by the Fifth Amendment of the United States Constitution which provides that "no person shall be deprived of life, liberty or property without due process of law...", and of the Fourteen Amendment of the Constitution of the United States which makes the Fifth Amendment applicable to the states and provides that, "...no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

2. Whether the Florida statute is flawed when it allows the district courts in essence to cut off the right of review by the Florida Supreme Court, and by so doing, shifts their burden to the United States Supreme Court.

PARTIES TO THE PROCEEDINGS

The following party was Plaintiff below and is Petitioner before this Court:

ALFONSO DIAZ DEL CASTILLO

The following party was Defendant below and is Respondent before this Court:

AEROSERVICE AVIATION CENTER, INC.

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PETITION FOR A WRIT OF CERTIORARI TO THE

SUPREME COURT OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

The petitioner, Alfonso Diaz del Castillo prays that a writ of certiorari issue to review the judgement and opinion entered on August 10, 1993 by the Court of Appeals of the State of Florida, Third District, in the proceedings entitled Alfonso Diaz del Castillo v. Aeroservice Aviation Center, Inc., Docket Number 92-2707.

OPINION BELOW

The opinion of the United States Court of Appeals of the State of Florida, Third District, as "Per Curiam. Affirmed." appears in the Appendix as "Appendix A." (Page 11).

JURISDICTION

The Court of Appeals entered judgment on August 10, 1993. The United States Supreme Court's jurisdiction is invoked by virtue of Title 28 United States Code, § 1257(3). This Petition is timely filed and subject to an extension of the time to file, to and including March 17, 1994, granted by Justice Anthony M. Kennedy on February 23, 1994.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides that "no person shall be...deprived of life, liberty or property without due process of law...."

The Fourteen Amendment of the Constitution of the United States makes the Fifth Amendment applicable to the states and provides that, "...no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The amended Florida Constitution of March 11, 1980, Article 5, Section 3(b)(3), denies U.S. citizen Alfonso Diaz del Castillo his due process rights secured by the United States Constitution. (*Philip H. Jenkins v. State of Florida*, 385 So.2d 1356; and *Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136)

STATEMENT OF THE CASE

Diaz del Castillo filed a lawsuit on October 19, 1990, for Breach of Contract, Unjust Enrichment and Fraud (in the inducement) against the Respondent, an aviation training school in Miami, Florida, named Aeroservice Aviation Center, Inc.

The case arose on May 9, 1988, when Diaz del Castillo exchanged his privately owned aircraft for certain specific training courses and Federal Aviation Administration certifications offered by the Respondent. On the trial day, Diaz del Castillo proceeded only on the count of fraud. Diaz del Castillo closed his case after testimony by Mr. Vincent La Forgia[1] who under oath represented to the Court to be the Respondent's representative, to be the person most familiar with the Case, and who had answered the interrogatories for the Respondent. Respondent then moved for a directed verdict which was granted. Diaz del Castillo timely moved for a new trial but the Court denied this Motion. Subsequently, Diaz del Castillo appealed to the Florida Court of Appeals, Third District, where the defendant in his Answer Brief declared that the person who had given the testimony mentioned above "had zero knowledge of the facts of

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[1] Mr. Vincent La Forgia is a son of Vito La Forgia, who is the owner and President of Aeroservice Aviation Center, Inc.

this case." Diaz del Castillo raised this new fraud issue before the Court of Appeal on his Reply Brief to Aeroservice Aviation Center's "Answer Brief of Appellee" to the Third District Court of Appeal. The Court of Appeal rendered its decision as "Per Curiam. Affirmed." (Exhibit A - Page 11). Diaz del Castillo then petitioned the Court of Appeal for Rehearing and Hearing en Banc, but it was denied. (Exhibit B - Page 12). Subsequently, Diaz del Castillo filed an Appeal to the Florida Supreme Court. The Supreme Court dismissed the appeal stating that it appeared to the Court to be without jurisdiction. (Appendix C - Page 13). Therefore, Diaz del Castillo challenges the constitutionality of the amended Florida law as it relates to the present case.

Because the amended Florida Constitution under Article 5, §§ 3, 3(b)(3), states that the Florida Supreme Court lacks jurisdiction to review District Court of Appeals decisions, where the

Court renders "Per Curiam" decisions without opinion, or accompanied by a dissenting or concurring opinion, Diaz del Castillo finds himself without the protection provided to citizens under the United States Constitution. In this case justice has been denied.

In Diaz del Castillo's cause and others similarly situated, a new interpretation or modification needs to be carved out from the current Florida Constitution, in particular where there is a newly discovered and admitted fraud during the appellate process, so that the Florida Supreme Court can address the issue consistent with the justice of the courts. If there is no modification carved out or new interpretation to the Florida Constitution in the present cause, Diaz del Castillo's only recourse is to Move to Vacate Judgement as a collateral issue, and move for a new trial in a separate cause in the lower court. Eventually this new cause may reach the Florida

Supreme Court, in which case the Florida Supreme Court may not hear the case if a "Per Curiam" decision is issued by the Court of Appeals. In that situation the fraud issue perpetrated by the Respondent and discovered during the appeal process for which Diaz del Castillo has requested the Writ of Certiorari to the United States Supreme Court never would be addressed.

REASONS FOR GRANTING THE WRIT

The Florida Court of Appeals in its review of the case apparently not only overlooked or misunderstood the facts in this case by affirming it based upon *Price v. Airlift International, Inc.*, 181 So.2d 549 (1966), but an entirely new issue was raised during the appeal process, namely, the revelation and admission by the Respondent, Aeroservice Aviation Center, Inc. that it perpetrated a fraud during the discovery process and before the trial Court (Dade County Circuit Court, Eleventh Judicial Circuit).

Diaz del Castillo contends that Respondent's admitted fraud in the discovery process, constitutes not only a fraud upon the Petitioner, without which the trial court's decision would have been different, but further constitutes a fraud upon the court itself.

Although this issue of fraud in the discovery process was brought to the attention of the District Court of Appeals by Diaz del Castillo on his reply to Aeroservice Aviation Center's Brief, and on a Motion for Rehearing and Hearing in Banc, the Court of Appeals either chose to overlook it, or never properly considered this most important issue of fraud in discovery and fraud on the Court that only arose because of the inadvertent admission of the Respondent, Aeroservice Aviation Center, Inc. in its Answer Brief before the Court of Appeals.

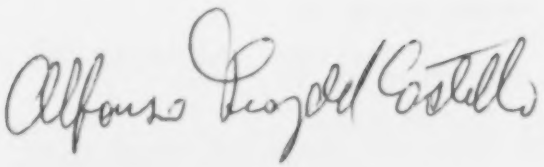
The United States Supreme Court should take the jurisdiction of this case in order to set clear that such fraud in the discovery process and during the trial shall not be tolerated by the Courts in the State of Florida.

The present Florida rule which allows the Court of Appeals to "rubber stamp" the decisions of the lower court by issuing decisions as "Per Curiam Affirmed" with full knowledge that the Supreme Court would not review its cases, and the Supreme Court of Florida failure to recognize jurisdiction in this matter is contrary to the proper administration of justice and is unconstitutional. (See Fla. Rule App. Proc. 9.030(a)(2)(A)(i-iv).

CONCLUSION

For the reasons stated a Writ of Certiorari should be granted.

Respectfully submitted,



Alfonso Diaz del Castillo

Petitioner, Pro se.

Dated: Falls Church, Virginia, March 17, 1994

5501 Seminary Road, Apartment 815-S

Falls Church, Virginia 22041

Telephone 703-820-0998

APPENDIX A

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1993

ALFONSO DIAZ DEL CASTILLO, Appellant,

vs. CASE No. 92-2707

AEROSERVICE AVIATION CENTER, INC. Appellee.

Opinion filed August 10, 1993.

An Appeal from the Circuit Court for Dade County, Edward S. Klein, Judge.

Richard A. Feldman, for appellant.

Steven T. Scott, for appellee.

Before SCHWARTS, C.J., JORGENSON, and GODERICH, JJ.

PER CURIAM.

Affirmed. *Price v. Airlift Int'l, Inc.*, 181 So. 2d 549 (Fla. 3d DCA 1966).

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1993

OCTOBER 12, 1993

ALFONSO DIAZ DEL CASTILLO, Appellant,

vs. CASE No. 92-2707

AEROSERVICE AVIATION CENTER, INC. Appellee.

Upon consideration, appellant's motion for rehearing is hereby denied. Schwartz, C.J., and Jorgenson and Goderich, JJ., concur. Appellant's motion for rehearing en banc is denied.

A true Copy. Attest:

LOUIS J. SPALLONE

Clerk District Court of

Appeal, third District

By /s/ Deputy Clerk

cc: Steven T. Scott Richard A. Feldman

/nbc

APPENDIX C

SUPREME COURT OF FLORIDA

FRIDAY, NOVEMBER 19, 1993

ALFONSO DIAZ DEL CASTILLO, Petitioner,

vs. CASE No. 82,752

District Court of Appeal,

3rd District, No. 92-2707

AEROSERVICE AVIATION CENTER, INC., Respondent.

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. *Dodi Publishing Co. v. Editorial America, S.A.*, 385 So.2d 1369 (Fla. 1980)

No motion for rehearing will be entertained by the Court.

A True Copy
TEST: Sid J. White
Clerk, Supreme Court
By: /s/ Deputy Clerk

cc: Hon. Louis J. Spallone, Clerk
Hon. Harvey Ruvin, Clerk
Hon. Edward S. Klein, Judge
Mr. Richard A. Feldman
Mr. Steven T. Scott